

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

LABORERS' PUBLIC SERVICE)	
EMPLOYEES UNION, LOCAL 1290 P.E.,)	
)	
Petitioner,)	
)	
v.)	
)	Public Case No. R 2010-015
CITY OF ST. JOSEPH)	
)	
Respondent.)	

DECISION

In this case, the Laborers' Public Service Employees Union, Local 1290 P.E. (Local 1290), petitioned to represent a bargaining unit of employees of the City of St. Joseph (City). The parties' sole dispute is whether, in an otherwise city-wide unit, workers at the City's Water Pollution Control Plant may properly be excluded. The Board concludes that a city-wide unit, with the exception of Water Pollution Control Plant workers (who already have a certified bargaining representative), is an appropriate bargaining unit and directs that a representation election be held among the members of that unit.

JURISDICTIONAL AND PROCEDURAL BACKGROUND

Local 1290 filed its petition requesting to represent workers in the City's Street and Sewer Maintenance Departments on February 9, 2010. At a conference on April 6, 2010, the City asserted that only a city-wide unit of all its employees (other than managerial and supervisory employees) would be appropriate. Local 1290 agrees to redefine the unit it originally proposed to represent to include all City employees (again other than those working in managerial and supervisory capacities), with the exception of workers employed in the City's Water Pollution Control Plant.¹ Local 1290 makes this exception because the workers in the

¹ The Water Pollution Control Plant is also referred to in the record and briefing variously as the Water Protection Division, the Water Treatment Plant, and the Water Treatment and Protection Plant.

Water Pollution Control Plant have an existing bargaining representative certified by this Board. The City does not agree to the exclusion of these workers on the grounds that to do so would result in workers holding comparable positions subject to common work conditions being split between separate bargaining units and, generally, in over-fragmentation of bargaining units within the City.

The issue in this case – whether or not the Water Pollution Control Plant workers must be included in an otherwise city-wide bargaining unit – is one relating to the appropriateness of a bargaining unit. This Board is authorized to hear and decide such issues. § 105.525, RSMo.

The Board held a hearing in Jefferson City, Missouri, on January 10, 2011, to allow the parties to provide testimony and other evidence regarding the issues raised by the parties. Board Chairman Jim Avery, Employer Members Emily Martin and Leonard Toenjes, and Employee Members Lewis Moye and Robert Miller were present in person to hear the case. Representatives of Local 1290 and of the City attended the hearing and had a full opportunity to present evidence and make arguments. Both parties also took advantage of the opportunity they were given to file post-hearing briefs.

Based on its review of the whole record, including the evidence presented, arguments made, and briefing filed, the Board issues the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

After Local 1290 petitioned the Board to be certified as the exclusive bargaining representative of workers in the City's Street and Sewer Maintenance Departments, the City proposed instead that the unit be a larger one consisting of employees working throughout the City. Local 1290 is willing to accept a city-wide bargaining unit as proposed by the City, excepting only those employees that work in the Water Pollution Control Plant. Local 1290 does not agree to seek representation of the Water Pollution Control Plant workers because the Board has already certified Service Employees International Union, Local 2000, as their

bargaining representative and also because Local 1290's parent organization, the Laborers' International Union, has an agreement with other AFL-CIO affiliated unions, including SEIU, not to "raid" each other's members.

SEIU, Local 96, was certified as the bargaining representative for the Water Pollution Control Plant unit some years ago. Local 96 and the City thereafter entered into a collective bargaining agreement covering this unit. In 2007, SEIU, Local 2000, succeeded Local 96 as the unit's certified bargaining representative. In October 2009, Local 2000 notified the City that it had entered into a servicing agreement with SEIU, Local 1, through which Local 1 would handle representational functions for Local 2000, including grievance administration and labor-management meetings.

Meanwhile the Water Pollution Control Plant unit continued to operate under the agreement negotiated by Local 96 pursuant to its Duration Clause, which provided that the agreement would remain in effect for three years following its adoption by the City Council (a time period that has expired), but that it "shall automatically be renewed from year-to-year thereafter, unless either party shall have notified the other in writing . . . that it desires to modify the agreement." On February 25, 2010, Sherwin Carroll, a Local 1 representative, notified the City that it wanted to open negotiations to modify the agreement. The City engaged in some negotiations with Mr. Carroll and later sent him proposed modifications of the agreement. This proposal remained pending at the time of the hearing in this case. If accepted, the City's Human Resources Director, an official with many years involvement in labor relations for the City, understood that the proposal would constitute a collective bargaining agreement applicable only to the Water Pollution Control Plant unit. Following SEIU's notification that it wanted to open negotiations with regard to the collective bargaining agreement, the City continued to handle the grievances of Water Pollution Control Plant workers under the terms of that agreement, including provision of notice to Mr. Carroll.

On September 15, 2010, SEIU's International President ordered that public service units represented by Local 2000, including the City's Water Pollution Control Plant unit, be merged into Local 1. On October 1, 2010, Local 1 filed a petition with the Board to amend the certification of Local 2000 as the bargaining representative of the Water Pollution Control Plant unit to reflect that, following the merger, Local 1 is the representative of the unit. Contemporaneously with its decision in this case, the Board is also issuing a decision granting Local 1's petition for amendment of certification. See *SEIU, Local 1 v. City of St. Joseph*, Case No. AC 2011-005 (SBM 2011).

All workers in the city-wide unit proposed by the City in this case (except for two lab personnel who are included within the existing Water Pollution Control Plant unit) are classified by the City as being in crafts and trades positions. Particular crafts and trades classifications may include workers in multiple City departments. For example, the City employs maintenance technicians (Classification C21 09) in the Parks and Recreation Department and in the Public Works Department (both within the Water Pollution Control Plant and in other subdivisions of the Public Works Department). Employees in the various classifications have similar knowledge, skills, duties, responsibilities, and functions as the other employees in the same classification. The pay of City employees is determined under a common pay plan by job classification and years of service, regardless of which Department they work in.

City employees have common benefits, including those related to vacation accrual, holiday pay, sick leave, life insurance, medical insurance, disability, and retirement. All employees within the City's proposed bargaining unit are subject to the same performance evaluation system. The City's Personnel Manual sets out policies and procedures applicable to all City employees except for those covered by a collective bargaining agreement that has conflicting provisions. The agreement covering the Water Pollution Control Plant workers contained some provisions that conflict with the Personnel Manual. The City contends that the

Water Pollution Control Plant agreement is no longer in effect² and, therefore, that these workers are also now subject to the provisions of the Personnel Manual.

The City has a unified labor relations policy. This is shown by its employment of a Human Resources Director who testified that her responsibilities include “anything pertaining to employment and labor relations, benefits, compensation, Worker's Comp, liability of property, insurances, all of the things that go with those.”

The parties agree that their only dispute in this case is whether the appropriate bargaining unit to be certified must be the city-wide unit proposed by the City (the positions set out in Petitioner's Exhibit 1) or the unit as proposed by the City with the exception of the positions included in the existing Water Pollution Control Plant unit (the positions set out in Petitioner's Exhibit 1 except those marked “SEIU”).

CONCLUSIONS OF LAW

I. GENERAL PRINCIPLES

It is the Board's responsibility to determine appropriate bargaining units. “Appropriate unit” is defined as “a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned[.]” § 105.500(1), RSMo. In deciding whether employees have a sufficient community of interest to be included in a single unit, the Board traditionally examines a series of factors:

- (1) Similarity in scale or manner of determining earnings;
- (2) Similarity in employment benefits, hours of work, and other terms and conditions of employment;
- (3) Similarity in the kind of work performed;
- (4) Similarity in the qualifications, skills, and training of the employees;

² The Board need not decide whether or not this agreement is still effective because its decision in this case is not dependent on the answer to that question.

- (5) Frequency of contact or interchange among the employees;
- (6) Geographic proximity;
- (7) Continuity or integration of production processes;
- (8) Common supervision and determination of labor-relations policy;
- (9) Relationship to the administrative organization of the employer;
- (10) History of collective bargaining;
- (11) Extent of union organization.

E.g., Int'l Union of Oper. Engrs., Local 2 v. City of St. Louis, Case No. R 2003-12, at 8-9 (SBM 2003).

The Board has also long held that its statutory role is not to find “the most” appropriate unit, but to determine whether the proposed unit is “an” appropriate unit. *E.g., Local 753 v. City of West Plains*, Case No. R 97-022, at 14 (SBM 1997); *Amalgamated Transit Union v. Bi-State Dev. Agency*, Case No. 78-004, at 6 (SBM 1979). “This distinction is important because it means that the Petitioner does not have to request an election in the most appropriate unit that could be envisioned, either by the parties themselves or this Board.” *City of West Plains*, Case No. R 97-022, at 14. Employees should be provided with “the opportunity to be represented in *workable* units by unions of their own choosing [that] may reasonably be expected to be concerned with the unique interests and aspirations of the employees” of the unit. *Id.* (Emphasis added.)

Further, the Board is concerned that bargaining units not become overly fragmented because that can hinder effective bargaining for both workers and their employers.

[T]he Board has consistently held that employees who possess skills and duties not shared by other employees will require separate representation only when it is necessary to protect their right to effective bargaining. . . . Furthermore, “[t]he board has recognized that there is strength in size and that a unit may be too small to be effective, so that employees should be excluded from bargaining units only for substantial reasons.”

City of St. Louis, Case No. R 2003-12, at 9 (quoting *Parkway School Dist. v. Parkway Ass'n of Educ.*, 807 S.W.2d 63, 68 (Mo. banc 1991)).

Once an appropriate unit is established and a union certified as the bargaining representative for that unit, that union is the exclusive bargaining representative for the unit. The employer must recognize that union and no other as the bargaining representative of that unit. No union is permitted to interfere in a unit for which another union has been certified. These conclusions are inescapable from the term “exclusive bargaining representative.” This term is statutorily defined as “an organization which has been designated or selected by majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining[.]” § 105.500(2), RSMo. “[A]n organization” means one organization.

II. WATER POLLUTION CONTROL PLANT WORKERS

In applying these principles³ to this case, the Board first rules that the City’s employees in the existing Water Pollution Control Plant unit must be excluded from the bargaining unit to be established in this case. The Water Pollution Control Plant employees have been included in another bargaining unit with its own certified exclusive bargaining representative for many years. The Board confirms this unit and the certified representative of the unit with its decision in *SEIU, Local 1 v. City of St. Joseph*, Case No. AC 2011-005 (SBM 2011), which is issued contemporaneously with the decision in this case. Because the Water Pollution Control Plant employees already have an exclusive bargaining representative, the petitioning union in this

³ The City cites to *Independence-NEA v. Independence School Dist.*, 223 S.W.3d 131, 139 (Mo. banc 2007), in which the Missouri Supreme Court overruled existing case law and held that the Missouri Constitution’s guarantee to “employees” of the “right to organize and to bargain collectively” applies to public employees as well as to private employees, and then notes (at page 5 of its brief) that a “constitutional right is a far higher than that permitted by a mere statute.” The Board holds that the principles discussed in this decision that were developed under Missouri’s Public Sector Labor Law, §§ 105.500 to 105.530, RSMo, are equally applicable under the *Independence-NEA* decision.

case, even if it so desired (which it does not), cannot also represent those workers. Before any rival union could do so, the workers in the unit would have to vote to decertify their current bargaining representative and, then after the passage of at least one year, the rival could petition for its own recognition as the bargaining representative. See 8 CSR 40-2.160(10).

Whether Local 1290 or the Board, in the absence of the already existing Water Pollution Control Plant unit might consider the workers at the Water Pollution Control Plant to be appropriate for inclusion in a city-wide unit, their inclusion in the actual circumstances is not an option under the law because they already have an *exclusive* bargaining representative certified to represent them.⁴ Neither is the inclusion of these Water Pollution Control Plant workers in the unit proposed by Local 1290 necessary. As discussed above, all that is required is “an” appropriate unit. So, the question becomes whether a city-wide unit, with the exception of the Water Pollution Control Plant workers, is an appropriate unit.

III. APPROPRIATENESS OF UNIT WITHOUT WATER POLLUTION CONTROL PLANT WORKERS

The City’s position appears to be that, if the Water Pollution Control Plant workers are not to be included in an otherwise city-wide unit, it would still consent to the establishment of a city-wide unit that excludes those workers. Considering that Local 1290 is itself agreeable to such a unit, the Board could accept this agreement and proceed to an election in the agreed unit. See 8 CSR 40-2.100; 8 CSR 40-2.180.

But even if the Board misreads the City’s position, it still concludes that the city-wide unit as proposed by the City, excepting the already represented Water Pollution Control Plant workers, is an appropriate bargaining unit. The workers in that unit share a sufficient community of interest to be commonly represented in one unit.

These workers are paid pursuant to a common pay plan. (Community of Interest Factor 1.) They have common benefits, including those related to vacation accrual, holiday pay, sick

⁴ In reaching this conclusion, the Board places no reliance on any “anti-raid” agreement between the Laborers International Union and SEIU.

leave, life insurance, medical insurance, disability, and retirement. (Factor 2.) They are subject to the same performance evaluation system and the same City Personnel Manual and the City's employment of a Human Resources Director whose responsibilities include "anything pertaining to employment and labor relations" shows that it has a common labor relations policy. (Factors 8 and 9.) There is also no indication that the City's employees, other than those in the Water Pollution Control Plant, have previously engaged in collective bargaining or that, prior to Local 1290's current efforts, attempted to organize a union. (Factors 10 and 11.) The evidence relating to these factors supports a determination that the workers share a clear and identifiable community of interest. *See Carpenters' Dist. Council, Local 795 v. St. Louis County*, Case No. R 98-027, at 17-20 (SBM 1999).

Although the employees included in the City's proposed unit (again excepting the Water Pollution Control Plant workers) possess different qualifications and skills and perform varying types of work in multiple departments (Factors 3 and 4), they are all working in crafts and trades positions. To whatever extent the evidence as to these factors points away from a determination that the workers share a community of interest, it is not sufficient to outweigh the several other factors favoring such a conclusion. *See Id.* at 17.

There is no evidence concerning the continuity or integration of the work of the various City employees at issue. (Factor 7.) They are, however, all engaged in furthering the public services provided by their common municipal employer. This factor is neutral or slightly favorable to a determination of a shared community of interest.

There is no evidence relating to the frequency of contact or interchange among the City's employees or to the geographic proximity of their work places. (Factor 5 and 6.) These factors are neutral.

The balance of all the factors together tilts the scale strongly toward a conclusion that there is a community of interest among these employees justifying their inclusion in a single unit. This conclusion is further supported by the value of not over-fragmenting workers into

multiple units too small to be effective.⁵ Even though some groups of the employees have different qualifications and skills and perform different types of duties for the City than other groups, it is proper for the Board to place workers with different skills and duties in the same unit unless such a joinder will cause conflicts of interest significant enough to undermine the right to effective bargaining of any of the included classes of workers. *City of St. Louis*, Case No. R 2003-12, at 9. No such conflicts are suggested by the evidence in this case, none are urged by the parties, and the Board finds none.⁶

Based upon the Board's determination that workers in the proposed city-wide bargaining unit (excepting the Water Pollution Control Plant workers) share a community of interest, it concludes that the proposed city-wide unit (excepting the Water Pollution Control Plant workers) is an appropriate bargaining unit.

⁵ The Board intends no irony in relying on its concern that bargaining units not be over-fragmented in support of its establishment of a city-wide unit without the Water Pollution Control Plant workers, in the face of the City's position that a city-wide unit needs to include the Water Pollution Control Plant workers to avoid over-fragmentation. As discussed above, inclusion of those workers in a city-wide unit to be represented by a union other than their certified bargaining representative is simply not an option under the law. Moreover, the Board does not consider that two units within a city the size of St. Joseph amounts to over-fragmentation.

⁶ Even if there were any evidence in this case that some of the workers at issue have little contact and interchange with others and that there is geographic separation of workplaces (Factors 5 and 6), such circumstances do not require creation of separate bargaining units either. Certification of separate bargaining units simply because groups of employees within a larger whole lack contact and interchange with other employee groups or because the groups are geographically separated would result in an unmanageable proliferation of bargaining units. *Missouri Fed'n of Teachers v. Dep't of Elem. and Sec. Educ.*, Case No. R 89-017, at 6 (SBM 1989).

ORDER

Having concluded that the proposed city-wide unit (excepting the Water Pollution Control Plant workers) is an appropriate bargaining unit, the Board hereby specifically defines that unit as follows:⁷

All employees, other than supervisory and managerial employees, in the City of St. Joseph's Fire Department, Police Department, Public Works Department (including that Department's divisions covering the airport, SIMR administration, street maintenance, equipment support, sewer maintenance, parking, landfill, recycling, and traffic, signs, signals & markings, but excluding that Department's divisions covering water protection treatment and the laboratory⁸), and Parks and Recreation Department (including that Department's divisions covering park maintenance, civic facilities, the Missouri Theater, the Bode Sports Complex, Golf, and the senior citizens center) that hold positions in the City's craft and trade classification, including Airport Maintenance Specialist, Building Maintenance Technician, Maintenance Technician, Custodian, Auto Service Technician, Automotive Storeroom Clerk, Auto Mechanic, Senior Auto Mechanic, Equipment Operator 1, 2, 3, and 4, Horticulturist, Laborer, Sewer Maintenance Laborer, T.V. Sewer Technician, Signal Repair Technician, and Utility Cut Inspector.

DIRECTION OF ELECTION

The Chairman of the State Board of Mediation, or other representative designated by the Board or by the Chairman, shall conduct a secret ballot election among the employees in the bargaining unit described in the Order to determine whether a majority of unit members support Local 1290 as their exclusive bargaining representative. This election shall take place as soon as possible, but not later than 45 days from the date set out below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those who were employed during the

⁷ The Board bases this unit description on the City's Departments, divisions, and employment classifications as set out in Petitioner's Exhibit 1.

⁸ For these exclusions to the unit, the Board follows the terms used in Petitioner's Exhibit 1. The Board understands that the water protection treatment and laboratory divisions of the City's Public Works Department comprise the Water Pollution Control Plant unit that is discussed in this decision. It is the Board's intent that the exclusions of positions in the water protection treatment and laboratory divisions of the City's Public Works Department be equivalent to an exclusion of the positions in the Water Pollution Control Plant that are included in the unit represented by SEIU, Local 1.

payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election.

The Chairman directs the City to prepare an alphabetical list of names and home addresses of employees in the unit described above who were employed during the payroll period immediately preceding the date of this decision. The Chairman further directs the City to provide this list to the Board and to Local 1290 within 14 calendar days from the date of this decision.

Signed this 6th day of September, 2011.

STATE BOARD OF MEDIATION

A handwritten signature in black ink, appearing to read 'Jim Avery', with a stylized, flowing script.

Jim Avery, Chairman

A handwritten signature in black ink, appearing to read 'Emily Martin', with a cursive style.

Emily Martin, Employer Member

A handwritten signature in blue ink, appearing to read 'Leonard Toenjes', with a cursive style.

Leonard Toenjes, Employer Member

A handwritten signature in black ink, appearing to read 'Lewis B. Moye Jr.', with a cursive style.

Lewis Moye, Employee Member

A handwritten signature in black ink, appearing to read 'Robert Miller', with a cursive style.

Robert Miller, Employee Member